

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

IN RE: ETHICON, INC.  
PELVIC REPAIR SYSTEM PRODUCTS  
LIABILITY LITIGATION

MDL NO. 2327

THIS DOCUMENT RELATES TO ALL CASES

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**APPLICATION FOR APPOINTMENT OF FRED THOMPSON TO THE PLAINTIFFS'  
STEERING COMMITTEE AND PLAINTIFFS' COORDINATING CO-LEAD COUNSEL**

Please consider this my Application to the Plaintiff's Steering Committee and for appointment as Co-lead of the Coordinating Leadership.

**Professional Experience**

I graduated *cum laude* from Yale University in 1973. After serving as a gunnery assistant and anti-submarine warfare officer as a lieutenant junior grade in the U.S. Navy from 1973-76, I returned to law school and graduated with distinction from Duke University School of Law in 1979. I was elected to the Order of the Coif. I served on the Editorial Board of the Duke Law Journal.

I have been a member of the Bar of the South Carolina Supreme Court since 1979, practicing continuously for 32 years. I am a member of the United States District Court for South Carolina; the Fourth and Second Circuit Courts of Appeals, and the United States Supreme Court. I have been admitted *pro hac vice* to numerous state and federal fora and have never been denied admission. I have never suffered discipline or sanctions by any sitting court. I carry an AV rating from Martindale Hubbell.

I am a Member of Motley Rice LLC and am the Leader of the firm's Medical Practice Group, managing all cases related to medical devices, pharmaceutical drugs, medical negligence, and nursing home cases. I have maintained an active trial practice in the drug and device arena. My work has led to my appointment to numerous leadership positions, including Plaintiffs' co-lead counsel in the federal Digitek® consolidation which resulted in a settlement for the Plaintiffs. I have also been appointed to the Plaintiffs' Steering Committees in the Medtronic Sprint Fidelis® defibrillator lead, Avandia®, Fosamax® Femur, Trasylol®, Zicam®, and Hydroxycut® federal multidistrict litigation. I am co-liaison counsel in the In Re C.R. Bard, Inc. Pelvic Repair Systems Liability Litigation MDL. I have participated as a speaker and panelist at numerous legal gatherings.

With its main office in Mt. Pleasant, South Carolina, and offices in Providence, Rhode Island; Hartford, Connecticut; Morgantown, West Virginia; Los Angeles, California, New York City, New York; and Washington, D.C., Motley Rice has a nationally based plaintiffs' practice and the

firm has vast experience litigating complex cases nationally. Motley Rice began representing workers injured by the asbestos industry in the 1970s and has been a leader at the forefront of the litigation. The lawyers of Motley Rice participated in the tobacco litigation by representing various states' attorneys general and were preeminent players in achieving that national settlement. The firm has also been in the forefront of litigation on behalf of 9/11 families and terrorism cases, aviation cases, lead paint and many other complex mass injury, commercial, and environmental cases. Several Motley Rice members serve as co-lead counsel and liaison counsel in numerous litigations, including the Kugel Mesh MDL and the Human Tissue MDL, and they have current PSC positions on the Depuy Orthopaedics, Inc. ASR Hip Implant MDL, and the NuvaRing Products Liability Litigation MDL. Most recently, Joseph Rice and a team of Motley Rice members and attorneys were appointed to the BP Oil Spill MDL, MDL 2179, and served as senior negotiators in fashioning the settlement just announced of the outstanding private claims arising from the April 20, 2010 oil spill, a settlement involving many thousands of claims and creating a settlement fund of in excess of seven billion dollars. Thus, the firm has an outstanding record of achieving complex settlements of mass injury consolidations, and will provide outstanding resources, experience, and an accomplished track record of dealing with many claimants, co-counsel, and adversaries, to achieve fair and efficient resolution of the TVM litigation.

#### **Availability**

I, as a member of Motley Rice, have the time as well as financial and staff resources to work on behalf of all plaintiffs.

#### **Discussion of Proposed Leadership Plan**

I serve as ***Co-liaison*** of the Bard Avaulta MDL 2187, under appointment by this Court on December 9, 2010. My firm represents over a thousand clients who claim injury as a result of product defects contained in Bard, Johnson and Johnson, Boston Scientific, and AMS TVM products. We have cases pending in each of the forming MDLs, and we have cases filed on behalf of clients in state court proceedings in Atlantic County, New Jersey; Boston, Massachusetts; Hennipen County, Minnesota; and Wilmington, Delaware, and are actively involved in the discovery and trial preparation for those state cases. We have studied carefully the nuances presented by this litigation, including common regulatory issues, common science issues, numerous clients and counsel representing them, multiple state fora, and multiple manufacturers and came to the conclusion that a grouping of all manufacturers' cases before a single federal forum offered the most efficient way of addressing this phenomenon.

Thus, at an early time, we communicated with fellow plaintiffs' counsel. As a result of those discussions, we formed a group of cohesive leads, including Henry Garrard, Bryan Aylstock and

myself. This core group has held numerous educational seminars, and numerous open meetings of counsel representing clients. We developed a listing of all known attorneys representing clients and have regularly scheduled calls. Messrs Garrard, Aylstock and I filed joint petitions seeking MDL status for Johnson and Johnson, AMS, and Boston Scientific, which were granted by the JPML panel by Orders of February 7, 2012. Subsequent to those orders we have continued to discuss efficient leadership formation with all interested parties. As result of those lengthy discussions we have generated a plan of organization which we have tendered to the Court for its consideration.

I strongly support that plan and urge its adoption. I incorporate that proposed plan into my filing today and will not repeat the reasons contained in that filing. However, I wish to add that this proposed plan reflects several principles. First, because TVM is a product that exclusively harms women, we have taken pains to include a strong gender representation. Second, we have taken pains to include younger but still extremely qualified persons in the leadership and PSC proposed positions. Third, we have placed three outstanding West Virginia attorneys as co-liaison, insuring a strong West Virginia presence in the litigation. Fourth, although the listing of PSC members may seem at first blush to be lengthy, there are four MDLs being organized. The list contains persons who are already on the Bard MDL currently pending before this Court. They will be subsumed into the unified PSC. Should separate PSCs be constituted, the total number of members of four separate PSCs would be comparable to the proposed plan, and this PSC will be doing the work of four MDLs. The proposed PSC will ensure reasonable numbers to litigate the cases effectively. Further, we have included many members who have substantial numbers of clients, some filed in state courts, and many others presently unfilled. The attorneys' presence on the PSC will make clearer this court's ability to coordinate the litigation. Fifth, this group of attorneys has shown the ability to organize and work collegially in a demonstrated way that may not presented by a blended or randomly selected committee.

### **Conclusion**

For the reasons stated above, I hereby request appointment to the PSC and as Coordinating Co-Lead Counsel, and urge adoption of the proposed plan.

Respectfully submitted,

s/Fred Thompson III

FRED THOMPSON, III (SC Bar #5548)

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